

MUSICK, PEELER & GARRETT LLP

ATTORNEYS AT LAW
650 TOWN CENTER DRIVE, SUITE 1200
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 668-2400
FACSIMILE (714) 668-2490

David M. Lester (State Bar No. 119966)

d.lester@mpglaw.com

Donald E. Bradley (State Bar No. 145037)

d.bradley@mpglaw.com

Attorneys for Defendant PAR, Inc. dba PAR North America

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

KERRY KILE,

Plaintiff,

vs.

PAR, INC. dba PAR NORTH
AMERICA, COASTLINE
RECOVERY SERVICES, INC., and
DOES 1 through 10, inclusive,

Defendants.

Case No. 2:15-cv-05905 MWF (FFMx)

Hon. Michael W. Fitzgerald, Crtrm. 1600

**PROPOSED ORDER GRANTING
STIPULATED PROTECTIVE
ORDER**

IT IS HEREBY STIPULATED by and between Plaintiff Kerry Kile
("Plaintiff"), and defendants Coastline Recovery Services, Inc. and Defendant PAR,
Inc. dba PAR North America ("Defendants") through their respective attorneys of
record, as follows:

///

///

1. 1.

2. A. PURPOSES AND LIMITATIONS

3. Discovery in this action is likely to involve production of confidential,
 4. proprietary, or private information for which special protection from public
 5. disclosure and from use for any purpose other than prosecuting this litigation may
 6. be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 7. enter the following Stipulated Protective Order. The parties acknowledge that this
 8. Order does not confer blanket protections on all disclosures or responses to
 9. discovery and that the protection it affords from public disclosure and use extends
 10. only to the limited information or items that are entitled to confidential treatment
 11. under the applicable legal principles. The parties further acknowledge, as set forth in
 12. Section 12.3, below, that this Stipulated Protective Order does not entitle them to
 13. file confidential information under seal; Civil Local Rule 79-5 sets forth the
 14. procedures that must be followed and the standards that will be applied when a party
 15. seeks permission from the court to file material under seal.

16. B. GOOD CAUSE STATEMENT

17. This action is likely to involve trade secrets, customer and pricing lists and
 18. other valuable research, development, commercial, financial, technical and/or
 19. proprietary information for which special protection from public disclosure and
 20. from use for any purpose other than prosecution of this action is warranted. Such
 21. confidential and proprietary materials and information consist of, among other
 22. things, confidential business or financial information, information regarding
 23. confidential business practices, or other confidential research, development, or
 24. commercial information (including information implicating privacy rights of third
 25. parties), information otherwise generally unavailable to the public, or which may be
 26. privileged or otherwise protected from disclosure under state or federal statutes,
 27. court rules, case decisions, or common law. For example, proprietary information
 28. that Plaintiff's discovery demands have already requested includes (but is not

1 limited to): contracts between PAR and lenders that contain confidential pricing and
 2 other terms; contracts between PAR and repossession companies that contain
 3 confidential pricing and other terms; confidential identifying information regarding
 4 existing and former PAR employees. Accordingly, to expedite the flow of
 5 information, to facilitate the prompt resolution of disputes over confidentiality of
 6 discovery materials, to adequately protect information the parties are entitled to keep
 7 confidential, to ensure that the parties are permitted reasonable necessary uses of
 8 such material in preparation for and in the conduct of trial, to address their handling
 9 at the end of the litigation, and serve the ends of justice, a protective order for such
 10 information is justified in this matter. It is the intent of the parties that information
 11 will not be designated as confidential for tactical reasons and that nothing be so
 12 designated without a good faith belief that it has been maintained in a confidential,
 13 non-public manner, and there is good cause why it should not be part of the public
 14 record of this case.

15 2. DEFINITIONS

16 2.1 Action: *Kerry Kile v. PAR, Inc. dba PAR North America, et al.*,
 17 pending in the United States District Court for the Central District of California,
 18 Case No. 2:15-cv-05905 MWF (FFMx)

19 2.2 Challenging Party: a Party or Non-Party that challenges the
 20 designation of information or items under this Order.

21 2.3 "CONFIDENTIAL" Information or Items: information
 22 (regardless of how it is generated, stored or maintained) or tangible things that (1)
 23 qualify for protection under Federal Rule of Civil Procedure 26(c), or (2) as specified
 24 above in the Good Cause Statement, or (3) the private addresses and telephone
 25 numbers of witnesses.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as
 27 well as their support staff).

28 2.5 Designating Party: a Party or Non-Party that designates

1 information or items that it produces in disclosures or in responses to discovery as
 2 “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information,
 4 regardless of the medium or manner in which it is generated, stored, or maintained
 5 (including, among other things, testimony, transcripts, and tangible things), that are
 6 produced or generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a
 8 matter pertinent to the litigation who has been retained by a Party or its counsel to
 9 serve as an expert witness or as a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this
 11 Action. House Counsel does not include Outside Counsel of Record or any other
 12 outside counsel.

13 2.9 Non-Party: any natural person, partnership, corporation,
 14 association, or other legal entity not named as a Party to this action.

15 2.10 Outside Counsel of Record: attorneys who are not employees of
 16 a party to this Action but are retained to represent or advise a party to this Action
 17 and have appeared in this Action on behalf of that party or are affiliated with a law
 18 firm which has appeared on behalf of that party, and includes support staff.

19 2.11 Party: any party to this Action, including all of its officers,
 20 directors, employees, consultants, retained experts, and Outside Counsel of Record
 21 (and their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure
 23 or Discovery Material in this Action.

24 2.13 Professional Vendors: persons or entities that provide litigation
 25 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 27 and their employees and subcontractors.

28 2.14 Protected Material: any Disclosure or Discovery Material that is

1 designated as “CONFIDENTIAL.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery
3 Material from a Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only
6 Protected Material (as defined above), but also (1) any information copied or
7 extracted from Protected Material; (2) all copies, excerpts, summaries, or
8 compilations of Protected Material; and (3) any testimony, conversations, or
9 presentations by Parties or their Counsel that might reveal Protected Material.

10 Any use of Protected Material at trial shall be governed by the orders of the
11 trial judge. This Order does not govern the use of Protected Material at trial.

12 4. DURATION

13 If the case proceeds to trial, all of the information admitted at trial that was
14 designated as confidential or maintained pursuant to this protective order becomes
15 public and will be presumptively available to all members of the public, including
16 the press, unless compelling reasons supported by specific factual findings to
17 proceed otherwise are made to the trial judge in advance of the trial. See *Kamakana*
18 *v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
19 (distinguishing “good cause” showing for sealing documents produced in discovery
20 from “compelling reasons” standard when merits-related documents are part of court
21 record).

22 After final disposition of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs. Final disposition shall be
25 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
26 or without prejudice; and (2) final judgment herein after the completion and
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
28 including the time limits for filing any motions or applications for extension of time

1 pursuant to applicable law.

2
3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for
5 Protection. Each Party or Non-Party that designates information or items for
6 protection under this Order must take care to limit any such designation to specific
7 material that qualifies under the appropriate standards. The Designating Party must
8 designate for protection only those parts of material, documents, items, or oral or
9 written communications that qualify so that other portions of the material,
10 documents, items, or communications for which protection is not warranted are not
11 swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (e.g., to unnecessarily encumber the case development process or to impose
15 unnecessary expenses and burdens on other parties) may expose the Designating
16 Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection that Designating Party must
19 promptly notify all other Parties that it is withdrawing the inapplicable designation.

20 5.2 Manner and Timing of Designations. Except as otherwise
21 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
22 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
23 protection under this Order must be clearly so designated before the material is
24 disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
 2 contains protected material. If only a portion or portions of the material on a page
 3 qualifies for protection, the Producing Party also must clearly identify the protected
 4 portion(s) (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents available for inspection
 6 need not designate them for protection until after the inspecting Party has indicated
 7 which documents it would like copied and produced. During the inspection and
 8 before the designation, all of the material made available for inspection shall be
 9 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
 10 documents it wants copied and produced, the Producing Party must determine which
 11 documents, or portions thereof, qualify for protection under this Order. Then, before
 12 producing the specified documents, the Producing Party must affix the
 13 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
 14 portion or portions of the material on a page qualifies for protection, the Producing
 15 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 16 markings in the margins).

17 (b) for testimony given in depositions that the Designating Party identify
 18 the Disclosure or Discovery Material on the record, before the close of the
 19 deposition all protected testimony.

20 (c) for information produced in some form other than documentary and for
 21 any other tangible items, that the Producing Party affix in a prominent place on the
 22 exterior of the container or containers in which the information is stored the legend
 23 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 24 protection, the Producing Party, to the extent practicable, shall identify the protected
 25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an
 27 inadvertent failure to designate qualified information or items does not, standing
 28 alone, waive the Designating Party's right to secure protection under this Order for

1 such material. Upon timely correction of a designation, the Receiving Party must
 2 make reasonable efforts to assure that the material is treated in accordance with the
 3 provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 6 designation of confidentiality at any time that is consistent with the Court's
 7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the
 9 dispute resolution process under Local Rule 37.1 *et seq.*

10 6.3 The burden of persuasion in any such challenge proceeding shall
 11 be on the Designating Party. Frivolous challenges, and those made for an improper
 12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 13 parties) may expose the Challenging Party to sanctions. Unless the Designating
 14 Party has waived or withdrawn the confidentiality designation, all parties shall
 15 continue to afford the material in question the level of protection to which it is
 16 entitled under the Producing Party's designation until the Court rules on the
 17 challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material
 20 that is disclosed or produced by another Party or by a Non-Party in connection with
 21 this Action only for prosecuting, defending, or attempting to settle this Action. Such
 22 Protected Material may be disclosed only to the categories of persons and under the
 23 conditions described in this Order. When the Action has been terminated, a
 24 Receiving Party must comply with the provisions of section 13 below (FINAL
 25 DISPOSITION). Protected Material must be stored and maintained by a Receiving
 26 Party at a location and in a secure manner that ensures that access is limited to the
 27 persons authorized under this Order.

28 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
 2 Receiving Party may disclose any information or item designated

3 “CONFIDENTIAL” only to:

4 (a) the Receiving Party's Outside Counsel of Record in this
 5 Action, as well as employees of said Outside Counsel of Record to
 6 whom it is reasonably necessary to disclose the information for this
 7 Action;

8 (b) the officers, directors, and employees (including House
 9 Counsel) of the Receiving Party to whom disclosure is reasonably
 10 necessary for this Action;

11 (c) Experts (as defined in this Order) of the Receiving Party to
 12 whom disclosure is reasonably necessary for this Action and who have
 13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 14 A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and
 18 Professional Vendors to whom disclosure is reasonably necessary for
 19 this Action and who have signed the “Acknowledgment and Agreement
 20 to Be Bound” (Exhibit A);

21 (g) the author or recipient of a document containing the
 22 information or a custodian or other person who otherwise possessed or
 23 knew the information;

24 (h) during their depositions, witnesses, and attorneys for
 25 witnesses, in the Action to whom disclosure is reasonably necessary
 26 provided: (1) the deposing party requests that the witness sign the form
 27 attached as Exhibit 1 hereto; and (2) they will not be permitted to keep
 28 any confidential information unless they sign the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by
 2 the Designating Party or ordered by the court. Pages of transcribed
 3 deposition testimony or exhibits to depositions that reveal Protected
 4 Material may be separately bound by the court reporter and may not be
 5 disclosed to anyone except as permitted under this Stipulated Protective
 6 Order; and

7 (i) any mediator or settlement officer, and their supporting
 8 personnel, mutually agreed upon by any of the parties engaged in
 9 settlement discussions.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
 11 PRODUCED IN OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation
 13 that compels disclosure of any information or items designated in this Action as
 14 “CONFIDENTIAL,” that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification
 16 shall include a copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order
 18 to issue in the other litigation that some or all of the material covered by the
 19 subpoena or order is subject to this Protective Order. Such notification shall include
 20 a copy of this Stipulated Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be
 22 pursued by the Designating Party whose Protected Material may be affected.

23 If the Designating Party timely seeks a protective order, the Party served with
 24 the subpoena or court order shall not produce any information designated in this
 25 action as “CONFIDENTIAL” before a determination by the court from which the
 26 subpoena or order issued, unless the Party has obtained the Designating Party’s
 27 permission. The Designating Party shall bear the burden and expense of seeking
 28 protection in that court of its confidential material and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this Action
2 to disobey a lawful directive from another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a
6 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
7 produced by Non-Parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be
9 construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party's confidential information in its possession, and the Party is
12 subject to an agreement with the Non-Party not to produce the Non-Party's
13 confidential information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the Non-
15 Party that some or all of the information requested is subject to a
16 confidentiality agreement with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated
18 Protective Order in this Action, the relevant discovery request(s),
19 and a reasonably specific description of the information
20 requested; and

21 (3) make the information requested available for inspection by the
22 Non-Party, if requested.

23 (c) If the Non-Party fails to seek a protective order from this court within
24 14 days of receiving the notice and accompanying information, the Receiving Party
25 may produce the Non-Party's confidential information responsive to the discovery
26 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
27 not produce any information in its possession or control that is subject to the
28 confidentiality agreement with the Non-Party before a determination by the court.

1 Absent a court order to the contrary, the Non-Party shall bear the burden and
 2 expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 5 Protected Material to any person or in any circumstance not authorized under this
 6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
 7 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
 8 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
 9 persons to whom unauthorized disclosures were made of all the terms of this Order,
 10 and (d) request such person or persons to execute the “Acknowledgment and
 11 Agreement to Be Bound” that is attached hereto as Exhibit A.

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
 13 OTHERWISE PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain
 15 inadvertently produced material is subject to a claim of privilege or other protection,
 16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
 18 procedure may be established in an e-discovery order that provides for production
 19 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
 20 (e), insofar as the parties reach an agreement on the effect of disclosure of a
 21 communication or information covered by the attorney-client privilege or work
 22 product protection, the parties may incorporate their agreement in the stipulated
 23 protective order submitted to the court.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right
 26 of any person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of
 28 this Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in this
 2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
 3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal
 5 any Protected Material must comply with Civil Local Rule 79-5. Protected Material
 6 may only be filed under seal pursuant to a court order authorizing the sealing of the
 7 specific Protected Material at issue. If a Party's request to file Protected Material
 8 under seal is denied by the court, then the Receiving Party may file the information
 9 in the public record unless otherwise instructed by the court.

10 13. FINAL DISPOSITION

11 After the final disposition of this Action, as defined in paragraph 4, within 60
 12 days of a written request by the Designating Party, each Receiving Party must return
 13 all Protected Material to the Producing Party or destroy such material, at the
 14 selection of the Designating Party. As used in this subdivision, "all Protected
 15 Material" includes all copies, abstracts, compilations, summaries, and any other
 16 format reproducing or capturing any of the Protected Material. Whether the
 17 Protected Material is returned or destroyed, the Receiving Party must submit a
 18 written certification to the Producing Party (and, if not the same person or entity, to
 19 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
 20 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
 21 that the Receiving Party has not retained any copies, abstracts, compilations,
 22 summaries or any other format reproducing or capturing any of the Protected
 23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
 24 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
 25 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
 26 work product, and consultant and expert work product, even if such materials
 27 contain Protected Material. Any such archival copies that contain or constitute
 28 / / /

1 Protected Material remain subject to this Protective Order as set forth in Section 4
2 (DURATION).

3 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
4
5

6 DATED: December 6, 2016

/S/FREDERICK F. MUM
Hon. Frederick F. Mumm
United States Magistrate Judge

EXHIBIT "A"

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____,

My address is _____,

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Kerry Kile v. PAR, Inc. dba PAR North America, et al.*, Case No. 2:15-cv-05905 MWF (FFMx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28